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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

November 17, 1998

James L. Casserly
Office of Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W. - Room 832
Washington, DC 20554

Ex Parte Presentation
Reciprocal Compensation for Dial-Up Calls to ISPs
CC Docket No. 96-98; CCB/CPD No. 97-30.

Dear Mr. Casserly:

On behalf of KMC Telecom, Inc., ("KMC"), we are providing to you the attached materials that present a summary of an approach for resolving issues concerning reciprocal compensation for dial-up calls to Internet Service Providers ("ISPs"). These materials were presented to the Office of the Chairman, Office of General Counsel, and Common Carrier Bureau in recent meetings with those offices. KMC additionally outlined this approach in a November 6, 1998 letter to Commissioner Ness.

Under this approach, the Commission would conclude that dial-up calls to ISPs can constitute interstate communications by wire. The Commission at the same time would confirm that such interstate communications are comprised of telecommunications and information services segments. Thus, the dial-up call to the ISP is telecommunications whereas the Internet access segment is an information service. The Commission has already concluded that information services are legally cognizable under the Act only as information services notwithstanding that they are defined as being provided "via telecommunications."¹ Thus, the Commission has concluded that the statutory definitions of telecommunications and information services are "mutually exclusive"² and that the telecommunications components of Internet

¹ 47 U.S.C. Sec. 3(20).

² *In the Matter of Federal-State Joint Board on Universal Service*, Report to Congress, CC Docket No. 96-45, FCC 98-67, released April 10, 1998, para. 39 ("Report to

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access service do not under the Act have any separate "legal status" apart from the information service as a whole.³ This is consistent with the Commission's longstanding policy developed in *Computer II* that any service that is comprised in part of an enhanced service component will be considered for regulatory purposes as exclusively an enhanced service.⁴ Based on this precedent, the Commission would conclude that for legal purposes under the Act the telecommunications portion of a dial-up call to an ISP terminates when the communication reaches the ISP where it becomes cognizable under the Act exclusively as an information service notwithstanding that the Internet access service may be provided "via telecommunications" services obtained from telecommunications service providers. Accordingly, under the Act, LEC's are engaged in the transportation and termination of telecommunications with respect to dial-up calls to ISPs and are entitled to reciprocal compensation for this traffic under Section 251(b)(5). The Commission would also conclude that the jurisdictionally interstate nature of dial-up calls to ISPs does not foreclose application of Section 251(b)(5) to such calls since the Commission has already concluded that Section 251 creates a new regulatory paradigm under which the states may exercise authority over some interstate matters.⁵

This approach was also included in a summary of arguments presented by the Association of Local Telecommunications Services ("ALTS") in its November 13, 1998 letter. KMC fully supports the arguments presented in that letter.

Sincerely,



Richard Rindler
Patrick Donovan

cc: Magalie Roman Salas
Kyle Dixon
Kevin Martin
Robert Pepper

Congress").

³ *Id.* para. 79.

⁴ *See e.g., Computer III Phase II Recon. Order*, 3 FCC Rcd at 1153, n. 23.

⁵ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No.96-98, First Report and Order, 11 FCC Rcd 15499, para. 24 (1996) (*Local Competition Order*), *vacated in part, aff'd in part*, Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), *cert. granted on other grounds sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 118 S.Ct. 879 (1998).

RECIPROCAL COMPENSATION FOR DIAL-UP CALLS TO ISPs

- Assume that dial-up calls to ISPs are jurisdictionally interstate on an end-to-end analysis. It is irrelevant to jurisdiction that part of the communication is an information service.
- The Commission has consistently held that the telecommunications component of an information service loses any separate status for legal and regulatory purposes:
 - Under the *Computer II* "contamination doctrine" a service comprised in part of enhanced services becomes for regulatory purposes entirely an enhanced service.
 - In *Computer II* the Commission determined that enhanced services would not be subject to Title II notwithstanding that enhanced services are "offered over common carrier transmission facilities used in interstate communications."
 - In the *Stevens Report*, the Commission:
 - stated that the separate telecommunications parts of Internet access service would not be given a separate "legal status"; and
 - determined that information and telecommunications services are mutually exclusive definitions under the Act.
 - In the *Universal Service Order* the Commission determined that ISPs would not be required to contribute to universal service notwithstanding that information services are provided "via telecommunications."
- The definition of information services as being provided "via telecommunications" merely codified past Commission policy. It does not mean that the Commission must, or may, now attach separate legal status and regulatory consequences to the telecommunications component of information services.
- Given its past practice and interpretation of the Act, the Commission should determine that for regulatory purposes the telecommunications portion of a dial-up call to an ISP ends where the information service begins, and that, therefore, dial-up calls to ISPs are subject to reciprocal compensation under Section 251(b)(5).
- This would not limit federal rulemaking authority over ISPs use of the network to originate and terminate interstate communications. Only inter-carrier compensation for dial-up calls to ISPs would be subject to the Section 251/252 regulatory framework.
- The *Local Competition Order* recognized that the 1996 Act created a new regulatory paradigm in which states would have authority over some historically interstate matters, and *vice versa*.

